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09/747,537	12/22/2000	Robert A. Migliorini	10212	2084

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EXAMINER

KRUER, KEVIN R

ART UNIT	PAPER NUMBER
1773	11

DATE MAILED: 09/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/747,537	MIGLIORINI ET AL.
	Examiner Kevin R Kruer	Art Unit 1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 June 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7,9,10,12-30,33,35,37 and 38 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-7,9,10,12-30,33,35,37 and 38 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Withdrawal of Advisory Action

1. The advisory action mailed May 5, 2003 has been withdrawn. The examiner apologizes for any inconvenience the premature advisory action may have caused. The Office inadvertently entered the non-final office action of February 12, 2003 into the file as a final office action. The error has since been rectified.

The following action fully considers the amendments and arguments of the responses of May 22, 2003 and June 23, 2003, both of which have been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 37 and 38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support for the data points 17.7% and 31%, respectively. The examiner disagrees with Applicant's interpretation of the data on page 11 of the specification. For example, a film that shrinks 7% in one direction and 10.7% in another direction does not exhibit 17.7% shrink. Rather, the film exhibits 23.5% shrink. The examiner reaches this percentage by calculating the areas

of the film before shrinkage, the area of the film after shrinkage, and figuring out the resulting percent change in the film area.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. The rejection of claims 1-10,13-28, 30, and 31 under 35 U.S.C. 102(b) as being anticipated by Dries et al. (US 5,529,843) has been overcome by amendment.

Applicant has amended the independent claims to include the limitations of claim 11.

Claim Rejections - 35 USC § 103

6. The rejection of claims 1-11, 13-22, and 29-31 under 35 U.S.C. 103(a) as being unpatentable over Bossaert et al. (US 4,921,749) in view of Bleemberg et al (US 5,108,844) has been overcome by amendment. Bossaert does not teach a shrink film. To the contrary, Bossaert teaches that the film should be heat set to restrain the film from thermal shrinkage (col 3, lines 15+).

7. The rejection of claims 1-11, 13-21, 23-26, 30, and 31 under 35 U.S.C. 103(a) as being unpatentable over Schuhmann et al (US 5,433,983) in view of Bleemberg et al (US 5,108,844) has been overcome by amendment. Schuhmann does not teach a shrink film. To the contrary, Schuhmann teaches that the film should have "low shrink values (col 1, line 43).

8. The rejection of claims 1-7, 9-24, 26, 27, and 29-31 under 35 U.S.C. 103(a) as being unpatentable over Keller et al (US 5,691,043) in view of Peiffer et al (US

5,451,455) has been overcome by amendment. The films of Keller are not shrinkable in both the machine and traverse directions.

9. Claims 1-7, 9, 10, 13-18, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schloegl et al (US 5,234,733) in view of Bleemberg et al 5,108,844). Schloegl teaches a shrink film which is comprised of a plurality of polyolefinic layers. The base layer comprises polypropylene and a hydrogenated hydrocarbon resin admixture, and the top layers on each side of the base layer comprise polyolefinic sealable raw materials (abstract). The film possesses a shrinkability of more than 15% in the transverse direction and less than 6% in the longitudinal direction (abstract). The sealable layer may comprise olefinic homopolymers, ethylene-propylene copolymers, ethylene-butylene copolymers, propylene-butylene copolymers, and terpolymers of ethylene, propylene and butylene or another alpha olefin having 5 to 10 carbon atoms (col 3, lines 35+). The sealable layers may further comprise an antiblocking agent (col 4, lines 8+). The film is stretched more than 7.5 in the traverse direction, preferably 8-11 (col 5, lines 60+), and less than about 4.5 in the machine direction (col 5, line 52). NOTE: the examiner takes the position that "about 4.5" reads on "about 5." The core comprises 60-95wt% isotactic polypropylene (col 3, line 13) and 5-40wt% hydrocarbon resins (claim1) such as styrene resins, cyclopentadiene resins, toluene, and their hydrogenated derivates (col 3, lines 23+). NOTE: the hydrogenated cyclopentadiene reads on the claimed "saturated alicyclic" of claim 7. The film has a thickness of 15-50um, preferably 20-45um, wherein the sealable layers each have a thickness of about 0.5-1um (col 4, lines 48+).

Schloegl does not teach that the core should comprise a polymeric modifier. However, Blemburg teaches blends having improved adhesion to each other when coextruded into multilayer films resulting from adjusting the components of the blend of the layers (abstract). Specifically, Blemburg teaches that if a first layer comprises film forming polymer or copolymer Y, and a second film comprises polymer or copolymer X, these layers can have improved adhesion to one another when formed into a multilayered film if the first layer comprises a percentage of X, and the second layer comprises a percentage of Y (col 2, lines 12+). Thus, it would have been obvious to one of ordinary skill in the art to blend the olefinic polymer comprising the sealable layer into the core layer in amounts sufficient to improve adhesion of the core to the skin layers.

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the recycled and virgin materials are considered to be identical because each material comprises the same monomeric units with the same stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the current application, no such showing has been made. Thus, the examiner maintains the position that the product taught in Schloegl is identical to the claimed product of claim 5 for the reasons stated above.

With regard to claim 30, the examiner takes the position that multiple layers of the same composition directly adjacent to one another are not patentably distinct from a single layer film of the same composition because the films are identical.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schloegl et al (US 5,234,733) in view of Bleemberg et al 5,108,844), as applied to claims 1-7, 9, 10, 13-18, and 30 above, and further in view of Arita et al (US 4,652,490).

Schloegl in view of Bleemberg is relied upon as above. Specifically, Schloegl teaches that the shrinkable olefinic sealable layers may comprise polyethylene homopolymers. However, Schloegl does not teach that the sealable layers may comprise the claimed polyethylene homopolymer. However, Arita teaches a heat shrinkable film comprising an oriented polypropylene core and two outer heat shrinkable sealant layers (abstract). Arita teaches that the sealant layer may comprise LLDPE or LDPE (col 2, lines 53+).

Thus, it would have been obvious to one of ordinary skill in the art to utilize LLDPE or LDPE as the polyethylene homopolymer in the seal layer taught in Schloegl because Arita teaches such compositions are useful for sealant layers in heat shrinkable films.

11. Claims 1-7, 9, 10, 13-18, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schloegl et al (US 5,234,733) in view of Keller et al (US 5,691,043). Schloegl teaches a shrink film which is comprised of a plurality of polyolefinic layers. The base layer comprises polypropylene and a hydrogenated hydrocarbon resin admixture, and the top layers on each side of the base layer comprise polyolefinic sealable raw materials (abstract). The film possesses a shrinkability of more than 15% in the transverse direction and less than 6% in the

longitudinal direction (abstract). The sealable layer may comprise olefinic homopolymers, ethylene-propylene copolymers, ethylene-butylene copolymers, propylene-butylene copolymers, and terpolymers of ethylene, propylene and butylene or another alpha olefin having 5 to 10 carbon atoms (col 3, lines 35+). The sealable layers may further comprise an antiblocking agent (col 4, lines 8+). The film is stretched more than 7.5 in the traverse direction, preferably 8-11 (col 5, lines 60+), and less than about 4.5 in the machine direction (col 5, line 52). NOTE: the examiner takes the position that "about 4.5" reads on "about 5." The core comprises 60-95wt% isotactic polypropylene (col 3, line 13) and 5-40wt% hydrocarbon resins (claim1) such as styrene resins, cyclopentadiene resins, toluene, and their hydrogenated derivates (col 3, lines 23+). NOTE: the hydrogenated cyclopentadiene reads on the claimed "saturated alicyclic" of claim 7. The film has a thickness of 15-50um, preferably 20-45um, wherein the sealable layers each have a thickness of about 0.5-1um (col 4, lines 48+).

Schloegl does not teach that the core may comprise a modifier. However, Keller teaches a heat-shrinkable, biaxially oriented, multilayer film comprising a core layer and at least one polyolefin containing skin layer adjacent said core layer. The core layer contains isotactic polypropylene and a modifier that reduces the crystallinity of the polypropylene by increasing chain imperfections (abstract). The modifiers are included in amounts of less than 20wt% (see "the core" description of the specification) and can be selected from the group consisting of atactic polypropylene, syndiotactic polypropylene, ethylene-propylene copolymer, propylene-butylene copolymer, ethylene-propylene-butylene terpolymer and LLDPE (abstract). Thus, it would have been

obvious to one of ordinary skill in the art to add a modifier such as atactic polypropylene, syndiotactic polypropylene or the like to the core taught in Schloegl in order to reduce the crystallinity of the core layer.

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the recycled and virgin materials are considered to be identical because each material comprises the same monomeric units with the same stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the current application, no such showing has been made. Thus, the examiner maintains the position that the product taught in Schloegl is identical to the claimed product of claim 5 for the reasons stated above.

With regard to claim 30, the examiner takes the position that multiple layers of the same composition directly adjacent to one another are not patentably distinct from a single layer film of the same composition because the films are identical.

12. Claim 12 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Schloegl et al (US 5,234,733) in view of Keller et al (US 5,691,043), as applied to claims 1-7, 9, 10, 13-18, 29, and 30 above, and further in view of Arita et al (US 4,652,490). Schloegl in view of Keller is relied upon as above. Specifically, Schloegl teaches that the shrinkable olefinic sealable layers may comprise polyethylene homopolymers. However, Schloegl does not teach the claimed polyethylene homopolymer. However,

Arita teaches a heat shrinkable film comprising an oriented polypropylene core and two outer heat shrinkable sealant layers (abstract). Arita teaches that the sealant layer may comprise LLDPE or LDPE (col 2, lines 53+). Thus, it would have been obvious to one of ordinary skill in the art to utilize LLDPE or LDPE as the polyethylene homopolymer in the seal layer taught in Schloegl because Arita teaches such compositions are equivalent to the sealant layers taught in Schloegl.

13. Claims 1-7, 9, 10, 13-28, 30, 33, 35, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peiffer et al (US 5,372,882) in view of Bleemberg et al (US 5,108,844). Peiffer teaches a multilayer shrink film that can be heat-sealed at low temperatures. The film comprises a base layer and at least one top layer applied on one side. The film has a longitudinal shrinkage of greater than 10% and a transverse shrinkage of greater than 10% at 120C (abstract). The base layer comprises isotactic polypropylene (col 3, lines 14+). Advantageously, the base layer further comprises 1-30wt% of a hydrocarbon resin such as styrene resins, cyclopentadiene resins, terpenes, and their hydrogenated derivatives (col 5, lines 8+). NOTE: the hydrogenated cyclopentadiene reads on the claimed "saturated alicyclic" of claim 7. The top layers comprise any heat sealable alpha olefin polymer such as ethylene-propylene-butylene terpolymers, random ethylene-propylene copolymers, propylene-butylene copolymers, and the like (col 4, lines 13+). The top layers may further include antiblocking agents (col 6, lines 8+). The top layers of the film may be printed, metallized or laminated (col 8, lines 36+). The film has an overall thickness of 10-40um, with the top layers preferably having a thickness of 0.1-4um each (col 6, lines 1+).

The film can be made by coextruding the three layer film, stretching the film in the machine direction at a temperature of less than about 130C, and then stretching in the transverse direction at a temperature of 130C-155C (col 7, lines 8+). The stretching is preferably performed from about 4-9 in the longitudinal direction and 6-10 in the transverse direction (col 7, lines 37+). The film can then be corona or flame treated on one or both surfaces (col 8, lines 3+). The film is then wound up in a conventional manner using a wind up device (col 7, lines 54+).

Peiffer does not teach that the core should comprise a polymeric modifier. However, Bleemberg teaches blends having improved adhesion to each other when coextruded into multilayer films resulting from adjusting the components of the blend of the layers (abstract). Specifically, Bleemberg teaches that if a first layer comprises film forming polymer or copolymer Y, and a second film comprises polymer or copolymer X, these layers can have improved adhesion to one another when formed into a multilayered film if the first layer comprises a percentage of X, and the second layer comprises a percentage of Y (col 2, lines 12+). Thus, it would have been obvious to one of ordinary skill in the art to blend the olefinic polymer comprising the sealable layer into the core layer in amounts sufficient to improve adhesion of the core to the skin layers.

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the recycled and virgin materials are considered to be identical because each material comprises the same monomeric units with the same

stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the current application, no such showing has been made. Thus, the examiner maintains the position that the product taught in Peiffer is identical to the claimed product of claim 5 for the reasons stated above.

With respect to the temperature of machine and transverse direction orientation, the examiner takes the position that Peiffer reads on the claimed invention because the range taught in Peiffer encompasses the claimed range. The courts have held that, in the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art," a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed.Cir. 1990).

With regard to claim 30, the examiner takes the position that multiple layers of the same composition directly adjacent to one another are not patentably distinct from a single layer film of the same composition because the films are identical.

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outer heat shrinkable sealant layers (abstract). Arita teaches that the sealant layer may comprise LLDPE or LDPE (col 2, lines 53+). Thus, it would have been obvious to one of ordinary skill in the art to utilize LLDPE or LDPE as the polyethylene homopolymer in the seal layer taught in Peiffer because Arita teaches such compositions are useful for sealant layers in heat shrinkable films.

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Peiffer does not teach that the core should comprise a polymeric modifier. However, Keller teaches a heat-shrinkable, biaxially oriented, multilayer film comprising a core layer and at least one polyolefin containing skin layer adjacent said core layer. The core layer contains isotactic polypropylene and a modifier that reduces the crystallinity of the polypropylene by increasing chain imperfections (abstract). The modifiers are included in amounts of less than 20wt% (see "the core" description of the specification) and can be selected from the group consisting of atactic polypropylene, syndiotactic polypropylene, ethylene-propylene copolymer, propylene-butylene copolymer, ethylene-propylene-butylene terpolymer and LLDPE (abstract). Thus, it would have been obvious to one of ordinary skill in the art to add a modifier such as atactic polypropylene, syndiotactic polypropylene or the like to the core taught in Peiffer in order to reduce the crystallinity of the core layer.

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the materials are considered to be identical

because each material comprises the same monomeric units with the same stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the current application, no such showing has been made. Thus, the examiner maintains the position that the product taught in Peiffer is identical to the claimed product of claim 5 for the reasons stated above.

With respect to the temperature of machine and transverse direction orientation, the examiner takes the position that Peiffer reads on the claimed invention because the range taught in Peiffer encompasses the claimed range. The courts have held that, in the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art," a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed.Cir. 1990).

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a heat shrinkable film comprising an oriented polypropylene core and two outer heat shrinkable sealant layers (abstract). Arita teaches that the sealant layer may comprise LLDPE or LDPE (col 2, lines 53+). Thus, it would have been obvious to one of ordinary skill in the art to utilize LLDPE or LDPE as the polyethylene homopolymer in the seal layer taught in Peiffer because Arita teaches such compositions are useful for sealant layers in heat shrinkable films.

Response to Arguments

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessary because applicant amended the claims to include the limitation that the film is "shrinkable in both the machine direction and the transverse direction." Said limitation is new and was not previously considered.

In order to expedite prosecution, the examiner would like to take this opportunity to respond to some of applicant's arguments that may be relevant to the new rejections. Applicant argues that there is no reason to combine the teachings of Bleemberg with the various primary references because the primary references do not recognize adhesion as a problem. The examiner respectfully disagrees with Applicant's argument. The primary reference does not have to acknowledge that the improvement taught in the secondary reference is desirable. To the contrary, the art as a whole must indicate that the alteration is obvious. Bleemberg teaches that adding the composition of an adjacent layer to a core layer improves the adhesion between the two layers. Thus, the examiner maintains the position that the teachings of Bleemberg would have motivated

one of ordinary skill in the art to add the sealable layer composition to the core in order to improve adhesion.

All of Applicant's other arguments were directed toward references or combination of references that are no longer applicable.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-0025. The examiner can normally be reached on Monday-Friday from 7:00a.m. to 4:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

X-RK
krk


Paul Thibodeau
Supervisory Patent Examiner
Technology Center 1700